Filed 10/5/04 Skatell v. Regert CA5

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

CHARLES SKATELL et al.,	F041900
Plaintiffs and Appellants	(Super. Ct. No. 7706)
v.	
RICHARD L. REGERT,	**O P I N I O N**
Defendant and Respondent.	

APPEAL from a judgment of the Superior Court of Mariposa County. Charles Stone, Judge.

Wilkins, Drolshagen & Czeshinski and James H. Wilkins for Plaintiffs and Appellants.

McLaughlin Sullivan, William T. McLaughlin and Timothy R. Sullivan for Defendant and Respondent.

-ooOoo-

SUMMARY OF PROCEEDINGS BELOW

Appellants Charles and Rita Skatell lost their home in a wildfire on August 1, 1996. The Skatells submitted a claim for compensation to their insurance company, Fire Insurance Exchange (FIE), only to learn that their policy no longer guaranteed coverage for the full replacement cost of their home (known as "guaranteed replacement cost coverage"). The policy, originally purchased in 1994 through respondent Richard Regert, an authorized agent for FIE, had been changed during a renewal period to limit replacement cost to 125 percent of the policy limits (known as "extended replacement cost coverage"). The change to the policy was approved by the California Department of Insurance, which also approved the change endorsement and notification of change forms that FIE sent to its policyholders, including the Skatells. Under the terms of the insurance contract, when the Skatells paid their renewal premium after notification of the change in coverage, they accepted the change. The Skatells brought an action that named both FIE and Regert as defendants and alleged various causes of action, in both tort and contract, related to the Skatell's fire losses. The complaint alleged that Regert was negligent in failing to advise the Skatells of the significance of the coverage change, which left them inadequately insured.

The jury returned a verdict in favor of Regert.[1]

DISCUSSION

I.

The trial court did not abuse its discretion in admitting expert testimony by Howard Lamb.

---

[1] The jury found in favor of the Skatells and against FIE on other issues. A separate appeal from the judgment against FIE is pending.

Lamb testified about the customs and practices in the insurance industry, including the use of agents, the duties of agents to policyholders, how coverage changes are communicated to policyholders, and what duties (primarily sales and marketing) are delegated to agents in the insurance industry. According to appellants, Lamb should not have been permitted to testify to these matters because Lamb was never licensed as an insurance agent and "has never trained, supervised or instructed insurance sales agents on the duty of care they owed to policyholders."

Expert opinion is admissible when it is "[r]elated to a subject that is sufficiently beyond common experience that the opinion of an expert would assist the trier of fact ...." (Evid. Code, § 801, subd. (a).) "A person is qualified to testify as an expert if he has special knowledge, skill, experience, training or education sufficient to qualify him as an expert on the subject to which his testimony relates." (*People v. Bloyd* (1987) 43 Cal.3d 333, 357; Evid. Code, § 801, subd. (b).) There is "no rigid classification of expert and nonexpert witnesses . . . . Expertness is relative to the subject, and any person who has special knowledge skill, or experience in any occupation, trade, or craft, may be qualified as an expert in his or her field. [Citations]." (1 Witkin, Cal. Evidence (4th ed. 2000) Opinion Evidence, § 38, p. 570; see also *Osborn v. Irwin Mem'l Blood Bank* (1992) 5 Cal.App.4th 234, 274-275 [witness qualified as expert to give medical opinion even though not a licensed physician because of education, work and experience in commercial blood industry]; *Hyman v. Gordon* (1973) 35 Cal.App.3d 769, 774 [fireman well qualified to offer "what information he possessed concerning fire hazards" even though issue was whether there was a defect in home design and fireman was not an expert in building or design]; *Naples Restaurant Inc. v. Coberly Ford* (1968) 259 Cal.App.2d 881, 884 [witness with long experience in selling automobiles qualified to testify on value of car, even though different from cars he sold; one experienced in auto sales business is likely to have informed opinion on value].)

Lamb had decades of experience in the insurance industry.[2] Lamb began his insurance career as an underwriter and later moved into management. He became the chief executive officer (CEO) and president of several insurance companies, both large and small. As a top insurance industry executive officer, he was ultimately responsible for every component of the business, including the actions of company agents, engaged in by the companies he ran. He testified he knew how policy provisions effecting coverage are changed in California and how policyholders are notified of such changes. He testified he had experience and training concerning the standard of care owed by company agents and independent brokers to policyholders. At one point he had been responsible for organizing an insurance agency, and, in that context, he had hired and trained company agents. In addition, when he was an underwriter he worked closely with agents in assessing whether a policy was written properly and provided the appropriate coverage.

Lamb's extensive experience gave him the knowledge and experience to qualify him to testify about insurance industry practices, including the duties of company agents such as respondent. A professional standard of care is established by the accepted industry practice. (*Spann v. Irwin Memorial Blood Centers* (1995) 34 Cal.App.4th 644, 655; see also *Diamond v. Grow* (1966) 243 Cal.App.2d 396, 401-402 [evidence of industry custom may assist in the determination of what constitutes due care]; *Pauly v. King* (1955) 44 Cal.2d 649, 654 [jury's decision that duty of care was breached is

---

[2] Lamb had never previously testified as an expert in a court of law. However, he qualified as an expert in an arbitration proceeding and worked as a consultant in the insurance industry for a number of years. The common definition of consultant is "one who gives expert or professional advice." (Webster's New College Dict. (1995) p. 242.) In any event, a witness should not be disqualified from testifying as an expert because he has never testified in court before. (*McCleery v. Bakersfield* (1985) 170 Cal.App.3d 1059, 1066.) Appellants do not argue otherwise.

supported by witness testimony concerning the accepted standard of practice in the building industry]; *Honea v. City Dairy* (1943) 22 Cal.2d 614, 619 [evidence concerning method of inspection used in the industry is relevant to duty of care issue].)

The fact that Lamb was never himself an agent did not disqualify him. As the top executive officer of an insurance company, Lamb was a principal and as such was responsible for the actions of the company's agents. (Civ. Code, § 2295 [an agent is one who represents and acts for another in dealings with third parties].) The standard of care applicable to an insurance agent's dealings with policyholders, i.e. third parties, is a matter of which the agent's principal must be aware. (See *Kotlar v. Hartford Fire Ins. Co*. (2000) 83 Cal.App.4th 1116, 1123; *Lippert v. Bailey* (1966) 241 Cal.App.2d 376, 382; *Gasnick v. State Farm Ins. Co.* (E.D.Cal. 1992) 825 F.Supp. 245, 249.) Lamb, as the highest management officer of a number of insurance companies, was therefore qualified to testify about what role, according to general insurance industry standards, a company agent would be expected to play with respect to policy changes and communications with policyholders.

Whether a person qualifies as an expert in a particular case depends upon the facts of the case and the witness's qualifications. (*People v. Bloyd, supra,* 43 Cal.3d at p. 357.) For this reason, none of the cases cited by appellants are persuasive because none require disqualification of an expert in a particular industry who was called to establish relevant standards in the industry. In all but one of the cases, the potential expert witness was disqualified because there was no factual link between the expert's qualifications and the opinion to be offered. Here, the trial court found Lamb's qualifications sufficient. We must give deference to the trial court's finding. The record supports a direct tie between Lamb's qualifications and the opinions he offered with respect to the responsibilities of company agents. (*People v. Davenport* (1995) 11 Cal.4th 1171, 1207 [trial court is given considerable latitude in determining the qualifications of an expert]; *People v. Hogan* (1982) 31 Cal.3d 815, 852 [appellate court may find error only if witness clearly lacks

qualification as an expert], disapproved on other grounds in *People v. Cooper* (1991) 53 Cal.3d 771, 836.)

In sum, we cannot say on this record that it was an abuse of discretion to permit Lamb to testify as an expert. (See *Mann v. Cracchiolo* (1985) 38 Cal.3d 18, 37-39 [the qualification of an expert is a matter addressed to the sound discretion of the trial court that will not be disturbed unless a clear abuse is shown]; *Beresford v. Pacific Gas & Elec. Co.* (1955) 45 Cal.2d 738, 749 [it is for the trial court to determine, in the exercise of a sound discretion, the competency and qualification of an expert witness; its ruling will not be disturbed upon appeal unless there is manifest abuse].) It was for the jury to determine what weight to assign Lamb's testimony, given his lack of experience in the trenches as an agent. (See *Mann v. Cracchiolo, supra*, 38 Cal.3d at pp. 37-38 [where witness has disclosed sufficient knowledge, the degree of knowledge goes to question of weight not admissibility]; *People v. Ward* (1999) 71 Cal.App.4th 368, 375 [jury can make own judgment about the qualifications of experts and the value of their opinions]; *Douglas v. Ostermeier* (1991) 1 Cal.App.4th 729, 730 [jury instructed on how to determine value of expert testimony; court must presume jury followed its instructions].)

Because we have concluded Lamb was properly qualified as an expert in the subjects to which he testified,[3] we need not undertake a prejudice analysis.[4]

---

[3] We have reviewed Lamb's testimony in its entirety and find that he did not testify beyond his qualifications. Lamb testified that Regert acted within industry standards when he failed to communicate with the Skatells about the policy changes because, industrywide, the insurer rather than the insurer's agent is responsible to directly communicate with the policyholder about policy changes. Lamb also opined that a company agent such as respondent could not as a practical matter communicate with each of the many customers of the company concerning every change made to a policy, even when the changes are significant.

[4] We do note that we would find, however, that any error would not have been prejudicial because other testimony and evidence not challenged by appellants on appeal,

DISPOSITION

The judgment is affirmed. Respondent shall recover his costs on appeal.

_____
Dibiaso, Acting P.J.

WE CONCUR:

_____
Harris, J.

_____
Buckley, J.

---

including respondent's own testimony, was consistent with the opinions offered by Lamb about the scope of a company agent's duties.